

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

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15. JULI 2004

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WRITTEN OPINION
(PCT Rule 66)

Date of mailing
(day/month/year)

14.07.2004

Applicant's or agent's file reference
4557/1 WO

REPLY DUE

within 3 month(s)
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International application No.
PCT/EP 03/10949

International filing date (day/month/year)
02.10.2003

Priority date (day/month/year)
04.10.2002

International Patent Classification (IPC) or both national classification and IPC
B65D75/32

Applicant
ELAN PHARMA INTERNATIONAL LIMITED et al.

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 04.02.2005

Name and mailing address of the international
preliminary examining authority:



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Formalities officer (incl. extension of time limits)
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-5 as originally filed

Claims, Numbers

1-5 as originally filed

Drawings, Sheets

1/2-2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	1-5
Inventive step (IS)	Claims	1-5
Industrial applicability (IA)	Claims	

2. Citations and explanations**see separate sheet**

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Reference is made to the following document/s/:
D1: DE 101 02 818 A (LOHMANN THERAPIE SYST LTS) 8 August 2002 (2002-08-08)
D2: US-A-6 155 423 (JONES BRIAN ET AL) 5 December 2000 (2000-12-05)
D3: DE 88 11 951 U (LOBERMEIER HANS) 12 January 1989 (1989-01-12)
2. D1 discloses a packaging comprising a tray having a series of spaced apart sections, each sections having a recess (4) and an upper surface, a sheet (3) fixed in part to the upper surface of the tray having at least a portion of the upper surface of the tray not fixed to the sheet thereby creating a tab (6), the tab being graduated in width from a narrow tip to a wider base, the base being adjacent to the sealed portion of the sheet, and the tab being located in one corner of the section of the tray. Thus the package of claim 1 is not novel (Art. 33 (2) PCT).
3. The technical features of dependent claim 2-5 are known from at least one of the documents D1-D3, e.g.:

claim 2: diameter of recess (see D1, column 3, line 59)
claim 3-5: aluminium laminate (see D2, column 6, line 52-61).
4. Independent claim 1 is not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D1) being placed in the preamble (Rule 6.3(b)(I) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
5. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
6. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D3 is not mentioned in the description, nor are these documents identified therein.